

**ATTACHMENT 3.2.1
CALIFORNIA'S HOUSING ELEMENT LAW:
THE ISSUE OF LOCAL NONCOMPLIANCE, A STUDY CONDUCTED
BY THE PUBLIC POLICY INSTITUTE OF CALIFORNIA (PPIC)**

**COMMUNITY, ECONOMIC & HUMAN DEVELOPMENT COMMITTEE
MARCH 06, 2002**

MEMO

TO: CEHD Committee

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SUBJECT: California's Housing Element Law: The Issue of Local Noncompliance
A Study Conducted by the Public Policy Institute of California (PPIC)

DATE: March 6, 2003

RECOMMENDED ACTION: Receive & File

SUMMARY: The attached are the *Foreword* and *Summary* of a study titled **California's Housing Element Law: The Issue of Local Noncompliance** produced by the Public Policy Institute of California (PPIC). The report analyses the relationship between Housing Element compliance and housing production. The report may be of interest to the Community, Economic and Human Development (CEHD) Committee given the policy issues under its purview. All 136 pages of the full report can be found online at <http://www.planetizen.com/news/item.php?id=8680> or <http://www.ppic.org/main/home.asp>.

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California's Housing Element Law: The Issue of Local Noncompliance

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Paul G. Lewis

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Foreword

It is no secret that affordable housing is scarce in California. Even with record low mortgage rates and plenty of demand, the lack of conveniently located, relatively low-cost housing has frustrated planners and consumers alike. What is less well known is that many local governments have been out of compliance with California's housing element law, which was designed to help local officials plan for adequate housing in their communities. In his latest look at local governance in California, Paul Lewis addresses the question of why so many cities and counties have been unable or unwilling to meet the state requirements for housing.

Lewis analyzes a long list of reasons why a city would be out of compliance with the law, including shortages of available land, explicit antigrowth policies, and an aversion to affordable housing among wealthy communities. His findings do not support the view that only the richest communities were out of compliance; in fact, smaller cities with older housing and those with strict growth controls were more likely to be noncompliant. He then takes a closer look at communities in the metropolitan areas of San Diego, Los Angeles, and the San Francisco Bay Area to identify the relationship between noncompliance and housing production. His results will come as a surprise to some. During the 1990s, noncompliant communities were just as likely to expand their housing stock as communities that complied with the law. Furthermore, when other factors were held constant, noncompliance was not a significant predictor of the rate of multifamily development.

After reviewing the policies of other states with comparable approaches, Lewis identifies three basic problems with California's housing element law. First, it often goes against the grain of local politics by asking cities to plan for the needs of the wider region, not just those of current city residents. Second, it may represent a mismatch of goals and policy tools. Specifically, it attempts to tackle the problems of overall

housing underproduction with a process-oriented approach developed to prod cities and counties into planning for their share of affordable units. Third, the statute itself is unwieldy, embraces multiple objectives, and is difficult for nonexperts to understand.

Lewis concludes that the time is ripe for policymakers and affected interest groups to seek a more workable, transparent, and straightforward approach to housing. These policymakers may need to resolve whether their major goal is a sheer increase in residential construction or an equitable distribution of affordable housing. Lewis warns that using a fair-share planning approach as a tool to encourage overall housing production places an unrealistic burden on a fairly fragile policy.

David W. Lyon
President and CEO
Public Policy Institute of California

Summary

California is generally perceived as producing less housing than would be expected or desired judging by its population and job gains. The statewide plan developed by the Department of Housing and Community Development (HCD) predicts that a continuation of current trends will lead to underproduction of needed housing by approximately 60 percent—likely leading in turn to a further upward spiral of home prices and rents as well as lower homeownership rates. This shortfall particularly hurts low-income families, which have more difficulty in paying the price or rent premium that results from undersupply.

Some observers argue that local governments' lack of enthusiasm for new housing in their communities is a large source of this problem. This report investigates California's housing element law, the major tool the state government uses to ensure that city and county land-use regulators are planning appropriately for new housing development. Enacted in original form in 1969, the housing element law requires that all cities and counties in California engage in detailed planning for their residential needs by including housing as an element of their comprehensive plans. The housing element process is intended to focus the attention of city policymakers on identifying land sites for housing, and on policy actions that would make it easier or less expensive to provide additional housing units.

The motivation for this study is the high degree of local noncompliance with the law. I begin by examining which types of city governments tend to have their housing elements deemed "out of compliance" by HCD staff. A second major goal is to determine whether such noncompliance can be linked statistically to a lower subsequent production of new housing. The report also reviews California's implementation of housing element law and compares it to the experiences of other states.

How the Housing Element Process Works

The housing element is the only part of local general plans that is subject to substantial oversight by the state. The state's interest in local housing elements has been justified by the fact that housing is enshrined in state law as a matter of "vital statewide importance." Nevertheless, housing elements in and of themselves rarely cause new housing to be built; in a market economy, private developers (or nonprofit builders of affordable housing) construct nearly all new housing units.

The housing element requirement is often called a "fair-share" housing law, with the term generally referring to a regional process by which each local community works to accommodate a fair proportion of the region's housing need. Regional councils of governments (which are planning councils representing the cities and counties in a given metropolitan area) work from state estimates of regional housing need and assign a housing unit goal, or allocation, to each city and unincorporated county area in their region. Cities and counties are then expected to update their housing elements to plan for quantified objectives for housing units over the next five years.

Unlike in some states with fair-share approaches, in California housing production itself has received as much emphasis as the geographic distribution of housing for lower-income families. This state's broader notion of fair share probably has resulted from its long-standing problem of housing affordability and underproduction, which limits the opportunities of not only the poor but also the middle class. The housing element statute requires that local planners address and reduce governmental constraints on the development of housing for all income levels. Such constraints may include local growth controls, strict building codes, developer fees, and permit procedures.

California law requires that local governments revise their housing elements periodically. In the current round of revisions, San Diego (in 1999) was the first region where localities were required to update their plans. In 2000 and 2001, cities and counties in the Southern California region and the San Francisco Bay Area undertook these updates, with the

requirement extending to the Bakersfield, Fresno, and Sacramento areas in mid-2002 and to the rest of the state's regions by the end of 2003.¹

Once a local update has been drafted, HCD reviews it to gauge whether the plan can enable the targeted number of units—including specific amounts of housing for households of very low, low, moderate, and “above moderate” incomes. If so, HCD certifies the housing element. If not, the jurisdiction may change its plan to incorporate HCD's suggestions. If the element is adopted without satisfying HCD—or fails to be updated at all—the city or county is regarded as noncompliant. That judgment limits its eligibility for certain state and federal funds for affordable housing and renders it more vulnerable to lawsuits that can halt development in the community. There have been frequent conflicts between state and local policymakers over housing element compliance.

Testing Competing Explanations for Local Noncompliance

One of the most contentious aspects of the housing element requirement is the fact that nearly four cities in ten and a quarter of counties are out of compliance with the law.² Large majorities of jurisdictions in the state have been noncompliant at some point. Explanations of this fact differ dramatically. Some communities have argued that state or regional projections fail to reflect powerful local realities, such as a lack of vacant land, which can make it difficult to identify a sufficient physical capacity to accommodate projected housing needs. Other observers argue that local noncompliance more frequently reflects an aversion to new housing—particularly affordable units—on the part of upper-income communities. Overt antigrowth policies or

¹Here, Southern California includes cities in the counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, and Ventura; the Bay Area includes cities in Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma Counties.

²This tally of noncompliant jurisdictions includes those whose housing element is overdue, as well as those found noncompliant after HCD review. In both cases, the housing element is legally noncompliant.

regulatory postures on the part of local governments—sometimes imposed on local governments by their voters—are also seen as a culprit. Still another possibility is that many jurisdictions fail to meet the housing element requirement because they lack the requisite planning capacity or experience.

State officials periodically seek ways to increase compliance with housing element law by penalizing noncompliant local governments. Housing advocates have long argued that sanctions should be stronger and that housing law needs more emphasis on results and less on process. Senate Bill 910, which passed the California Senate in 2001 but later died in the assembly, would have required that the state controller fine noncompliant cities. By contrast, local officials seek to protect local autonomy over land use—long one of the major pillars of home rule—and complain of distant state authorities who fail to understand local conditions.

This study examines the distinctions between cities that have been able to attain housing element compliance from those that have not. Measures of city characteristics are drawn primarily from the U.S. Census, and measures of local land-use policies and growth controls are drawn from a PPIC mail survey of local planners in the late 1990s. A simple comparison of cities in the regions that have recently been reviewed by HCD indicates that noncompliant communities are, on average, smaller and have older housing. In the rest of the state, where cities have had about a decade to reach compliance since their last housing element revisions were due, few cities were noncompliant. The simple comparison indicates that these few laggard communities tend to be wealthier and less ethnically diverse than compliant cities.

The results of a more sophisticated statistical analysis reveal the determinants of noncompliance in a more systematic way. This analysis involved cities in the Southern California region, San Diego County, the San Francisco Bay Area, and the 18-county Central Valley. Evidence was strong that cities' residential growth policies held a particularly important role for the HCD reviews. For example, cities whose planning directors report that the review process for new development proposals has been getting longer experience more trouble in attaining compliance. Each

restrictive growth policy that has been adopted by the city approximately doubles the odds that it will be found noncompliant.

An older housing stock is also associated with a greater likelihood of noncompliance. Cities with older housing may be more settled and have a more established community character; they are also likely to contain less vacant land. Cities with smaller populations are also more likely to be noncompliant, all else equal. Governments of larger cities may have a greater capacity to undertake the broad range of planning efforts needed to reach compliance and may also be more insulated from the political pressure of homeowners.

An additional finding is that the length of time that has elapsed since the deadline for submitting an updated housing element is one of the most statistically significant predictors of compliance. Specifically, the results indicate that each month that has passed since the region's deadline renders a city approximately 5 percent more likely to reach compliance. Even controlling for all these factors, cities in the Bay Area, Central Valley, and Inland Empire were more likely to be noncompliant than other cities.

It is also interesting to note that the compliance status of individual communities tends to persist over time. Although many cities were able to attain compliance as the 1990s wore on, it remained the case that noncompliance in 1991, after the past round of revisions in the coastal metropolitan areas, was a fairly good predictor of noncompliance in 2002.

Assessing the Relationship Between Compliance and Housing Production

Defenders of the housing element requirement tend to argue that local governments that comply with the law, by demonstrating adequate plans, enable more housing to be built. Using data from the 1990s, I examine whether a city's compliance status in 1991 helps to predict the percentage increase in the city's housing stock by 2000. The analysis again controls for a variety of other city characteristics that might be expected to influence the level and type of housing growth. Because of

data limitations, this analysis focuses only on cities in the Southern California, San Francisco Bay Area, and San Diego regions.

Using Census data on the number of housing units in each city, I find no detectable relationship between housing element compliance and the percentage increase in housing across these communities during the 1990s. Thus, for all the potential merits and benefits of housing element compliance, one must look to other factors to explain why some cities experience rapid housing development and other cities experience little. The analysis suggests that a city's demographic characteristics, its position in the urban hierarchy, and its physical capacity to accommodate new buildings are better predictors of housing growth.

Although the housing element statute, as a fair-share approach, is especially concerned with increasing the production of affordable housing, we unfortunately lack any comparable information for all cities about the production of affordable units. However, data from the Construction Industry Research Board do allow an analysis of multifamily housing production. Multifamily housing includes apartments and condominiums, the types of housing generally most relevant for those at the lower to middle levels of the income distribution, particularly in the coastal metropolitan areas where housing is expensive. Multifamily units represented only about one-quarter of the new units produced in the 1990s.

The results of this analysis once again show that housing element noncompliance as of 1991 is not a significant predictor of the rate of multifamily development when other relevant factors are held constant. Rather, cities that were job centers and that had fewer senior citizens as of 1990 tended to experience faster rates of multifamily housing development.

Finally, the report investigates whether housing element compliance affected the *mix* of housing developed in the 1990s—multifamily versus single-family—despite its lack of effects on the *rate* of increase. I examine the relationship between compliance and the *percentage share of new housing units that were multifamily units*. Here there *is* evidence of a significant association of compliance with the outcome in question. Cities with noncompliant housing elements developed new housing that was weighted more toward single-family units. Holding constant for

other city and county characteristics, a noncompliant housing element was linked to an 8 percentage point lower proportion of *multifamily* housing among the newly built units. The results imply that cities with compliant housing elements are willing to substitute multifamily (more affordable) units for a share of single-family units. Nevertheless, it is striking that one can detect no measurable relationship between compliance and overall housing production.

Rethinking the Housing Element Approach

Discussions of problems with the current housing-element law among California policymakers and housing advocates have led to a number of reform proposals in recent years. However, most of these proposals take the housing element approach—a state review of local plans for future housing needs—more or less as a given. A fundamental question may be whether the various goals and values that California policymakers hold dear—increased housing production, an equitable distribution of housing responsibility across communities, special attention to the housing needs of low-income groups, local autonomy and home rule, environmental protection, and more—can all be accommodated within this area of law, or whether there are tensions among them. A secondary question is whether the current approach is the most effective use of resources to further these goals.

Enticing communities to accommodate housing would not be such an uphill battle if they perceived that doing so would be in their financial self-interest. Thus, creating a component of the state fiscal system that rewards local governments for the addition of housing units, particularly affordable units, may result in less conflict and more cooperation. The Jobs/Housing Balance Incentive Program, passed in 2000, has elements of such a “rewards for performance” approach. Revenue sources that are distributed to localities on a population basis, such as the Vehicle License Fee subvention, also create indirect incentives for cities and counties to accommodate housing.

Other states, including some with equally strong traditions of home rule as California, have also wrestled with issues of inadequate housing production, mandated fair shares for jurisdictions, and state oversight of local planning. In New Jersey, for instance, production of affordable

housing rests mainly with the profit motives of private developers; they can propose a “builder’s remedy” by including a share of affordable units in otherwise market-rate projects that would normally exceed local zoning limitations. The quasijudicial state agency overseeing local housing plans also allows communities to transfer to other jurisdictions up to half of the affordable units they are expected to produce, in exchange for a payment to the “receiving” municipality.

In Massachusetts, developers of affordable projects have access to a Comprehensive Permit Law that enables them to proceed through a streamlined local review process, avoiding many of the intermediate reviews that other proposed developments must go through. Builders whose projects are denied by this local process have the option of appealing to a statewide board, the Housing Appeals Committee, which can overturn the local decision and order the project to be permitted.

In Oregon, the state’s Land Conservation and Development Commission imposes minimum zoning densities on residential land for cities and counties in the Portland metropolitan area. The localities in this region are also required to write plans so as to allow at least half of future residential units to be in multifamily projects.

As in these other states, California’s housing element requirement has often gone against the grain of local policymaking because it asks cities to plan for the needs of the wider region, not just the needs of current city residents. Indeed, the philosophy behind fair-share housing policy is that the so-called police power of local governments to regulate land use should be directed toward the general welfare of the region, not just the general welfare of the specific locality.

Those involved in California’s debate over housing policy often note how long and detailed the housing element statute is. Highly detailed statutes are often evidence of widespread disagreement on a given policy, as waves of “reform” occur in which opposing interests seek to have their specific concerns addressed and preserved in law. In the case of the housing element statute, the result is an unwieldy law that is often difficult for outside observers to comprehend in its entirety or details.

In the 33 years since the housing element statute was enacted, the search for an adequate supply of housing in California has only become more elusive. It may be a ripe occasion for policymakers and affected

interests to seek an approach to housing policy that is more workable, transparent, and straightforward, with measurable barometers of substantive local success or failure. In so doing, policymakers will need to resolve whether the major goal of such a law is a sheer increase in residential construction or an equitable distribution of affordable housing. Using a fair-share planning approach as a tool to encourage overall housing production may place an unrealistic burden on a relatively fragile policy.